IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10767 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHAILAL KALIDAS BAROT

Versus

FACTORY MANAGER

Appearance:

1. Special Civil Application No. 10767 of 2001

MR DHAVAL M BAROT for Petitioner No. 1

NANAVATI & NANAVATI for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2-3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 05/04/2002

ORAL JUDGEMENT

By this petition styled as a petition under Article 226 of the Constitution of India, the petitioner

workman, an ex-employee of the respondent No.1 has challenged the order of the Appellate Authority under the Payment of Gratuity Act, by which original order of the Controlling Authority awarding an amount of Rs. 87,385.50 with interest was reversed only on the ground that the petitioner was occupying the quarter even after discontinuance of his service. The interesting observation and conclusion of the Appellate Authority in its order dated 19th October, 2001 may be quoted as under:-

"Respondent is still occupying the quarter even after discontinuance of service. If law is there for making the payment of gratuity after retirement, there is law to vacate the quarter also belonging to employer after retirement. Law is meant for both. Now appellant employer has already deposited money with authority. Respondent should vacate quarter and come with clean hand and can get gratuity payable to him after adjusting penal rent payable by him."

2. It hardly requires any elaboration to discern that the Appellate Authority under the Payment of Gratuity Act, travelled far beyond it's jurisdiction and decided issue of payment of gratuity on the basis of a totally extraneous consideration of with-holding of quarter and practically decreed the amount allegedly due by way of penal rent. Learned Counsel for the petitioner cited a recent judgement of the Supreme Court in Gorakhpur University and ors. Vs. Dr. Shitla Prasad Nagendra and others, reported in (2001) 6 SCC 591, wherein it is reiterated and emphasised that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. The Supreme Court has also observed that with-holding of quarters allotted while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits.

In view of the above clear proposition of law and there being no other dispute or objection as regards payment of gratuity, the impugned order of the Appellate Authority is required to be set aside and the original order of the Controlling Authority awarding full amount of gratuity with interest is required to be upheld.

3. The learned Counsel for the respondent, for the first time in this proceeding initiated by the petitioner, raised the objection that the amount deposited by the respondent in compliance of the provisions contained in Section 7 of the Payment of Gratuity Act, for filing of appeal, was a deposit and cannot be released either by order of this Court or by the order of the Appellate Authority in view of the fact that the respondent employer company is declared to be a sick industrial undertaking under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. It is stated in the affidavit filed on their behalf that the case of the respondent Corporation is registered as Case No. PSU(C-535/92) with the Board for Industrial and Financial Reconstruction. The reference made to the said Board for Industrial and Financial Reconstruction under Section 16 of the said Act is pending before the Board. It was, on that basis, contended that the reference before the BIFR being pending, the respondent was entitled to the protection as provided under Section 22(1) of the said Act. Referring to the provisions of Section 22 of the said Act, it was argued that direct payment of the deposited amount of gratuity would amount to execution or coercive recovery, which was prohibited by the aforesaid provisions.

Section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 reads as under:-

"22 - Suspension of legal proceedings, contract etc.

(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any

guarantee in respect of any loan or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

Extracting the relevant portion of the above provision, it can be seen that what is prohibited is proceeding for the winding up of the industrial company or for execution, distress or the like and any suit for recovery of money. According to the submission of the respondent, the amount lying deposited under the Payment of Gratuity Act was in the nature of only a deposit and it remained the property of the respondent due to which the payment thereof to the petitioner would amount to recovery of money.

Learned Counsel for the respondent heavily relied upon the observations of the Supreme Court in Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and anr., reported in (1993) 2 SCC 144, to submit that the legal proceedings envisaged in the provisions of sub-section (1) of Section 22 of the Sick Industrial Companies Act, ought not to be narrowly construed so as to exclude the present proceedings under Article 226 of the Constitution initiated by the petitioner. The respondent tends to forget that the basis and causes of the present petition is the order of the Appellate Authority and neither the matter before the Appellate Authority, nor before this Court is a legal proceeding to recover any amount or execute any decree and therefore, the submission of the learned Counsel is besides the point.

4. It must be noted that the proceeding in which the amount was required to be deposited and was deposited, was the proceeding initiated by the respondent itself when it appealed against the order of the Controlling Authority to pay the gratuity. There was no question of filing any application for recovery of the said amount as far as the petitioner workman is concerned. As per the express provision of the Payment of Gratuity Act contained under Section 7, the employer is required to deposit with the Controlling Authority such amount as the employer admits to be payable or an amount equal to the amount of gratuity required to be deposited after the first adjudication by the Controlling Authority, when he prefers an appeal. The scheme and purpose of the provisions is apparently to ensure that at the end of the adjudication, the employee gets the real relief to which he was entitled as soon as his services came to an end.

As against that, in the petition filed by the employee, the respondent herein has, at this stage, sought to canvass that either the petition itself should not be entertained as the ultimate order would result into recovery or that the petitioner may be asked to first obtain a permission from the BIFR before proceeding with the matter. The petition having been filed by the employee, the respondent has no right to seek any relief in their favour and such an attempt to thwart the payment of terminal benefits already parted with and lying deposited with either Controlling or Appellate Authority at the instance of the respondent themselves can hardly be appreciated. In any view of the matter, neither the proceeding before the Appellate Authority, nor the present proceeding under Art. 226 of the Constitution of India are either recovery proceeding or amount to an execution of any decree or order. It has also to be specifically held that there is neither any execution, distress or any proceeding of the like nature against any of the properties of the company in view of the fact that the amount of gratuity having fallen due to the petitioner having been voluntarily deposited by the respondent before the Appellate Authority.

5. In the facts and for the reasons discussed hereinabove, the petition is allowed. The impugned order of the Appellate Authority dated 19.10.2001 is hereby set aside and the original order of the Controlling Authority is restored with a direction to the authorities under the Payment of Gratuity Act to disburse the amount in accordance with law. Rule is made absolute accordingly with no order as to costs.

Direct service permitted.

(D.H.Waghela, J.)

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